IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.2944 OF 2005

Yashwant Soma Kom ....Petitioner.
Taluka Dahanu, Zilla Thane.
Vs.

1. State of Maharashtra, Through
Secretary, School Education Department,
4th floor, Mantralaya, Mumbai.
(Writ to be served upon Govt.Pleader
High Court (A.S.), P.W.D.Building,
High Court Campus, Mumbai.)

2. The Deputy Director of Education,
Greater Mumbai (also having charge of
Thane Dist.) Jawahar Bal Bhavan,
Netaji Subhash Road, Charni Road, (W),
Mumbai 400 004.
(Writ to be served upon Govt. Pleader
High Court (A.S.), P.W.D. Building,
High Court Campus, Mumbai.)

3. Nutan Bal Shikshan Sangh's
Gram Bal Shikshan Kendra,
(Through CHairman/Secretary,
Vikas Wadi, Koshbad Hill, Tal.Dahanu,
Dist.Thane.

4. Vikaswadi Prathmik Shala, Vikas Wadi,
Koshbad Hill, Tal.Dahanu, Dist. Thane
(Through Headmaster)

5. The Education Inspector, (Primary)
Zilla Parishad, Thane. ..Respondents

ALONGWITH
WRIT PETITION NO.2978 OF 2005

Mohammed Rafique Shaikh Vazir Mania
Residing at C/o Bashir Vazir Sheikh
Atri Apartment Vangaon, Opp.Railway
Station, Taluka Dhanu, Zilla Thane ..Petitioner

Vs.

1. State of Maharashtra,
Through Secretary, School
Education Department,

4th floor, Mantralaya,
Mumbai.
(Writ to be served upon Govt.Pleader
High Court (A.S.), P.W.D.Building,
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(Through Headmaster)

5. The Education Inspector, (Primary)
Zilla Parishad, Thane. ..Respondents

Shri S.M.Masih for the Petitioners.
Shri C.R.Sonawane , the A.G.P., for the Respondent Nos.1 and 2.
Shri R.S.Apte for the Respondent Nos.3 and 4.

CORAM: A.P.SHAH AND
J.H.BHATIA JJ.
DATE : 11TH JULY, 2005.

ORAL JUDGMENT: (Per J.H.Bhatia,J.)

1. Both these Writ Petitions may be disposed of by this common judgment as facts and legal position in both the matters are almost identical.

2. **Rule.** Rule made returnable forthwith. With consent

of the learned counsels for both the parties, the matters are taken up for final hearing immediately. Heard the learned counsels for both the sides.

3. Admittedly in the year 1987, the Government of Maharashtra had put ban on the recruitment of non-teaching staff in the aided Private Primary Schools. However, that ban was lifted on 01.08.1995. It is alleged that on 7.12.95, the Respondent No.5, the Education Officer informed the Respondent No.4, the school management, that in view of the Government Resolution dated 01.08.1995 issued by the Government of Maharashtra, permission was granted to fill up the posts of non-teaching staff as per the permissible strength. In view of this communication, the Respondent Nos.3 and 4 appointed Yashwant, the Petitioner in Writ Petition No.2944 of 2005 as a peon and Mohammed Rafiq as a clerk in the school. Accordingly, the proposals were forwarded to the Respondent No.5 seeking approval to the said appointments so that necessary salary grants could be released in favour of the school. However, the Respondent No.5 declined to grant approval. In the result, the Respondent No.4 issued termination order dated 20th June, 2000 and thereby, terminated services of both the Petitioners. Both the Petitioners filed Appeals No.55 of 2000 and 56 of 2000 on 30th June, 2000

before the School Tribunal, New Bombay, challenging the termination order. During the litigation, it was revealed that the Respondent No.5 had submitted his proposal dated 7th February, 1997 to the Deputy Director of Education, Nashik region, Nashik to grant sanction to the two posts, i.e., Clerk and Peon, however, Deputy Director had not accorded sanction. The Respondent No.5 informed the management that the management would be responsible for the payment of the salary. After hearing the parties, the School Tribunal allowed the Appeals by the common judgment and order dated 07.05.2003 and directed to reinstate both the Petitioners to their respective posts with continuity of service with all the benefits including salary. The Respondent No.5 and the Deputy Director of Education were also directed to consider the proposal pertaining to both the Petitioners and recommend to the Director of Education for his approval to the appointments. The orders were duly communicated. However, no order was issued by the Deputy Director or the Director. In 2004, the Government of Maharashtra issued a fresh Government Resolution and accorded sanction for creation of certain posts of clerk and peons on contract basis with fixed honorarium and not regular salary. In these circumstances, the Petitioners have come to this Court, seeking necessary directions to the Government to accord

approval to their appointments on regular basis as per the School Tribunal order.

4. To resist admission of these Writ Petitions, affidavit in reply was filed by Madhavi Bhosale, on behalf of the Respondents Nos.1 and 2. Most of the facts alleged by the Petitioners are not in dispute. It is specifically admitted in the reply affidavit that as per the School Tribunal decision, the Respondent No.5, the Education Officer had forwarded the proposal for consideration to the Deputy Director of Education, Nashik but till date, the Government has not sanctioned the post of peon and clerk as per the proposal.It is also contended in the affidavit that now as per the Government Resolution dated 12.07.2004, the Government has sanctioned certain posts of peon and clerk on honorarium basis and the School has got the permission to make appointment to the post of peon and clerk on honorarium basis. It is contended that if the school management submits the proposal for approval, it may be granted on honorarium basis from the date of Government Resolution dated 12.07.2004.

5. In view of the allegations made in the Writ Petitions and above referred Affidavit in Reply, it is clear that post of the clerk and peon, on which the present

Petitioners were appointed, were within the sanctioned strength of the non-teaching staff for the School and the Government used to provide necessary grants and aid for these posts. However, in 1987, the Government had put a ban on filling up of non-teaching posts. These two posts which were vacant, could not be, therefore, filled in, in view of the said ban on recruitment of non-teaching staff. The ban was lifted by letter/circular dated 7th December, 1995.The Respondent No.5, the Education Officer informed the school that permission was granted to fill in non-teaching staff as per the permissible strength. This made clear that the School Management was authorised to make recruitments for the non-teaching posts within the sanctioned or permissible strength and it was implicit that the Government would be responsible to provide necessary grant and aid for the salary and allowances for such posts. At that time, on the basis of said Government Resolution dated 1.8.95 and the circular dated 7.12.95 , the school management was competent to make the recruitments and therefore, it appointed the Petitioners to the posts of peon and clerk respectively vide appointment letters dated 30.11.96. As the management was to seek grant in aid for these posts, naturally, as per the rules applicable, the School Management submitted the proposal to the Education Officer for

approval. The Respondent No.5, the Education Officer submitted the proposal to the Deputy Director of Education, the Respondent No.2, on 7.2.97 for sanction to the said two posts of clerk and peon. However, there was no response from the Deputy Director of Education. In earlier Writ Petition No.4114 of 2000, in the affidavit filed on behalf of the Respondent No.5, it was stated that sanction was required from the Director of Education, Maharashtra State, Pune, and, therefore, the Deputy Director had forwarded the proposal of the Education Officer to the Director of Education by his letter dated 15.4.97 and a reminder dated 11.11.97 was also sent but the Director of Education had not passed any order. It appears that in spite of having lifted ban on recruitment of non-teaching staff by the Government Resolution dated 1.8.95, the Director of Education, and thereby the Government, did not take necessary decision to accord approval to the said appointments for a long period of more than 6 years.It is submitted by the learned counsel for the Petitioners that appointments of the Petitioners were valid and they did not require any approval, however, approval was necessary only for getting grant in aid from the Government. Therefore, merely because the Government had failed to communicate its approval, the appointments of the Petitioners could not be cancelled, nor their

services could be terminated. In an unreported judgment passed in Writ Petition No.5369 of 1996, this Court had observed as follows:

> "There is no provision under the Act or the Rules framed thereunder requiring an approval for the appointment of an Assistant Teacher made by the Management, from the Education Officer. That approval may be necessary for getting grant in aid. Failure of the Management to get approval from the Education Officer does not entitle the management to terminate the services of a teacher who is appointed on probation and whose record of service is satisfactory."

6. Taking into consideration all the facts, circumstances and the legal position, the School Tribunal allowed the Appeals Nos.55 of 2000 and 56 of 2000 filed by the Petitioners and set aside the order of termination dated 20th June, 2000 with a direction to continue the Petitioners in service as a peon and clerk respectively with continuity of service and all the benefits including salary. The School Tribunal also directed to consider the proposals of the management in respect of both the Petitioners as per Government

Resolution dated 1.8.95 for final approval of the Director of Education. The decision of School Tribunal has became final. In view of the facts and circumstances noted above, it was necessary for the Government to accord sanction to the appointments of both the Petitioners with effect from the date of their appointments, i.e., 30th November, 1996, in view of the Government Resolution dated 1.8.95.

7. The contention of the Government that the proposal about the appointments of the Petitioners may be considered as per the Government Resolution dated 12.7.04 on the basis of fixed honorarium is liable to be rejected outright. The scheme of appointment of clerks and peons on fixed honorarium basis has come up recently, i.e., 12.7.04, long after the decision of the School Tribunal in respect of the Petitioners. The Petitioners who were appointed by the school management on 30.11.96 on regular salary basis as per the Government Resolution dated 1.8.95, lifting ban on recruitment of non-teaching staff in aided Private School, could not be equated with the persons who may be recruited for the first time, after the Government Resolution dated 12.7.04. The Government’s contention seeks to nullify the judgment of the School Tribunal which had already become final before the said

Government Resolution and this cannot be permitted.

8. In view of the facts and circumstances noted above, both the Writ Petitions are allowed. Rule is made absolute in terms of prayer clause (a) with the direction that the Petitioners shall be deemed to have been appointed on regular salary and allowances basis and not on the basis of fixed honorarium as per the Government Resolution dated 12.07.04. The Respondent Nos.1 and 2 are hereby directed to accord sanction to the appointments of the Petitioners on the post of the peon and the clerk within four weeks from the date of receipt of the copy of this order.

(A.P.SHAH,J.)

(J.H.BHATIA,J.)